

Senate Amendment 5076

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1 1 Amend Senate File 2283 as follows:
1 2 #1. By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <Section 1. NEW SECTION. 155B.1 DEFINITIONS.
1 5 As used in this chapter, unless the context
1 6 otherwise requires:
1 7 1. "Administrator" means an administrator as
1 8 defined in section 510.11.
1 9 2. "Commissioner" means the commissioner of
1 10 insurance.
1 11 3. "Contract" means a pharmacy benefits management
1 12 services contract entered into between a pharmacy
1 13 benefits manager and a covered entity.
1 14 4. "Covered entity" means a nonprofit hospital or
1 15 medical service corporation, health insurer, health
1 16 benefit plan, or health maintenance organization; a
1 17 health program administered by this state in the
1 18 capacity of provider of health coverage; or an
1 19 employer, labor union, or other group of persons
1 20 organized in the state that provides health coverage
1 21 to covered individuals who are employed or reside in
1 22 this state. "Covered entity" does not include a self=
1 23 funded plan that is exempt from state regulation
1 24 pursuant to the Employer Retirement Income Security
1 25 Act of 1974, as codified at 29 U.S.C. } 1001 et seq.,
1 26 a plan issued for coverage for federal employees, or a
1 27 health plan that provides coverage only for accidental
1 28 injury, specified disease, hospital indemnity,
1 29 Medicare supplement, disability income, long-term
1 30 care, or other limited benefit health insurance
1 31 policies and contracts.
1 32 5. "Covered individual" means a member,
1 33 participant, enrollee, contract holder, policy holder,
1 34 or beneficiary of a covered entity who is provided
1 35 health coverage by the covered entity. "Covered
1 36 individual" does not include a dependent or other
1 37 person provided health coverage through a policy,
1 38 contract, or plan for a covered individual.
1 39 6. "Generic drug" means a chemically equivalent
1 40 copy of a brand-name drug with an expired patent.
1 41 7. "Labeler" means a person that receives
1 42 prescription drugs from a manufacturer or wholesaler
1 43 and repackages those drugs for later retail sale and
1 44 that has a labeler code from the United States food
1 45 and drug administration under 21 C.F.R. } 207.20.
1 46 8. "Parties" means the pharmacy benefits manager
1 47 and the covered entity that enter into a contract
1 48 regulated under this chapter.
1 49 9. "Pharmacy benefits management" means the
1 50 procurement of prescription drugs at a negotiated rate
2 1 for dispensing within this state to covered
2 2 individuals, the administration or management of
2 3 prescription drug benefits provided by a covered
2 4 entity for the benefit of covered individuals, or any
2 5 of the following services provided with regard to the
2 6 administration of the following pharmacy benefits:
2 7 a. Mail service pharmacy.
2 8 b. Claims processing, retail network management,
2 9 and payment of claims to pharmacies for prescription
2 10 drugs dispensed to covered individuals.
2 11 c. Clinical formulary development and management
2 12 services.
2 13 d. Rebate contracting and administration.
2 14 e. Certain patient compliance, therapeutic
2 15 intervention, and generic substitution programs.
2 16 f. Disease management programs involving
2 17 prescription drug utilization.
2 18 10. "Pharmacy benefits manager" means an entity
2 19 that performs pharmacy benefits management. "Pharmacy
2 20 benefits manager" includes a person acting for a
2 21 pharmacy benefits manager in a contractual or

2 22 employment relationship in the performance of pharmacy
2 23 benefits management for a covered entity including
2 24 mail service pharmacy. "Pharmacy benefits manager"
2 25 does not include a health insurance carrier when the
2 26 health insurance carrier or its subsidiary is
2 27 providing pharmacy benefits management to its own
2 28 insureds or a public self-funded pool or a private
2 29 single employer self-funded plan that provides such
2 30 benefits or services directly to its beneficiaries.
2 31 11. "Proprietary information" means information on
2 32 pricing, costs, revenue, taxes, market share,
2 33 negotiating strategies, customers, and personnel held
2 34 by a private entity and used for that private entity's
2 35 business purposes.
2 36 12. "Trade secret" means information including a
2 37 formula, pattern, compilation, program, device,
2 38 method, technique, or process that does both of the
2 39 following:
2 40 a. Derives independent economic value, actual or
2 41 potential, from not being generally known to and not
2 42 being readily ascertainable by proper means by other
2 43 persons who can obtain economic value from its
2 44 disclosure or use.
2 45 b. Is the subject of efforts that are reasonable
2 46 under the circumstances to maintain its secrecy.
2 47 Sec. 2. NEW SECTION. 155B.2 PHARMACY BENEFITS
2 48 MANAGER == LICENSE REQUIRED == PERFORMANCE OF DUTIES
2 49 == PROHIBITION.
2 50 1. A person shall not operate or act as a pharmacy
3 1 benefits manager in this state without a valid
3 2 certificate of registration as an administrator
3 3 pursuant to section 510.21.
3 4 2. A pharmacy benefits manager shall perform its
3 5 duties exercising good faith and fair dealing toward
3 6 the covered entity.
3 7 3. Unless otherwise authorized pursuant to the
3 8 contract entered into between the parties, a pharmacy
3 9 benefits manager shall not contact a covered
3 10 individual without the express written permission of
3 11 the covered entity.
3 12 Sec. 3. NEW SECTION. 155B.3 DISCLOSURE OF
3 13 INFORMATION.
3 14 1. a. A covered entity may request that a
3 15 pharmacy benefits manager with which the covered
3 16 entity has entered into a contract disclose to the
3 17 covered entity the amount of all rebate revenues and
3 18 the nature, type, and amounts of all other revenues
3 19 that the pharmacy benefits manager receives from each
3 20 pharmaceutical manufacturer or labeler with whom the
3 21 pharmacy benefits manager has a contract. If such a
3 22 request is received, the pharmacy benefits manager
3 23 shall disclose all of the following in writing:
3 24 (1) The aggregate amount, and for a list of drugs
3 25 to be specified in the contract, the specific amount
3 26 of all rebates and other retrospective utilization
3 27 discounts received by the pharmacy benefits manager
3 28 directly or indirectly from each pharmaceutical
3 29 manufacturer or labeler that are earned in connection
3 30 with the dispensing of prescription drugs to covered
3 31 individuals of the health benefit plans issued by the
3 32 covered entity or for which the covered entity is the
3 33 designated administrator.
3 34 (2) The nature, type, and amount of all other
3 35 revenue received by the pharmacy benefits manager
3 36 directly or indirectly from each pharmaceutical
3 37 manufacturer or labeler for any other products or
3 38 services provided to the pharmaceutical manufacturer
3 39 or labeler by the pharmacy benefits manager with
3 40 respect to programs that the covered entity offers or
3 41 provides to its enrollees.
3 42 (3) Any prescription drug utilization information
3 43 requested by the covered entity relating to covered
3 44 individuals.
3 45 b. A pharmacy benefits manager shall provide the
3 46 information requested by a covered entity within
3 47 thirty days of receipt of the request. If requested,
3 48 the information shall be provided at least once,
3 49 annually. The contract entered into between the
3 50 parties shall specify any fees to be charged for drug
4 1 utilization reports requested by the covered entity.
4 2 2. a. With the exception of utilization

4 3 information, a covered entity shall maintain any
4 4 information disclosed in response to a request
4 5 pursuant to subsection 1 as confidential and
4 6 proprietary information, and shall not use such
4 7 information for any other purpose or disclose such
4 8 information to any other person except as otherwise
4 9 provided in this chapter or in the contract entered
4 10 into between the parties.

4 11 b. A covered entity that discloses information in
4 12 violation of this subsection is subject to an action
4 13 for injunctive relief and is liable for any damages
4 14 that are the direct and proximate result of such
4 15 disclosure.

4 16 c. This subsection does not prohibit a covered
4 17 entity from disclosing confidential and proprietary
4 18 information to the commissioner, upon request of the
4 19 commissioner. Any information disclosed to the
4 20 commissioner under this subsection is confidential and
4 21 privileged and is not open to public inspection or
4 22 disclosure.

4 23 3. A covered entity may require, in accordance
4 24 with the terms of the contract entered into between
4 25 the parties, the audit of the pharmacy benefits
4 26 manager's books and records related to the information
4 27 provided to the covered entity under subsection 1 to
4 28 the extent the information relates either directly or
4 29 indirectly to the contract. If the contract entered
4 30 into between the parties does not provide for such
4 31 audit, such an audit may be conducted if the audit
4 32 complies with all of the following:

4 33 a. The covered entity provides the pharmacy
4 34 benefits manager with thirty=business=days prior
4 35 written notice regarding the audit.

4 36 b. The covered entity requests an audit no more
4 37 than once in a twelve=month period.

4 38 c. If the covered entity selects an independent
4 39 person to conduct such audit, the independent person
4 40 enters into a confidentiality agreement with the
4 41 covered entity and the pharmacy benefits manager
4 42 ensuring that all information obtained during the
4 43 audit remains confidential. The independent person
4 44 shall not use, disclose, or otherwise reveal any such
4 45 information in any manner or form to any other person
4 46 except as otherwise permitted under the
4 47 confidentiality agreement. The covered entity shall
4 48 treat all information obtained as a result of the
4 49 audit as confidential, and shall not use or disclose
4 50 such information except as may be otherwise permitted
5 1 under the terms of the contract between the parties or
5 2 if ordered by a court of competent jurisdiction for
5 3 good cause shown.

5 4 d. The audit is conducted at the location of the
5 5 pharmacy benefits manager where the necessary records
5 6 are located, during normal business hours, without
5 7 undue interference with the pharmacy benefits
5 8 manager's business activities and in accordance with
5 9 recognized fair and equitable audit procedures.

5 10 Sec. 4. NEW SECTION. 155B.4 PRESCRIPTION DRUG
5 11 SUBSTITUTION.

5 12 1. With regard to the dispensing of a substitute
5 13 prescription drug for a prescribed drug to a covered
5 14 individual, if the pharmacy benefits manager requests
5 15 a substitution, all of the following conditions shall
5 16 be met:

5 17 a. The pharmacy benefits manager may request the
5 18 substitution of a lower=priced generic and
5 19 therapeutically equivalent drug for a higher=priced
5 20 prescribed drug.

5 21 b. With regard to a substitution in which the net
5 22 cost of the substitute drug is more for the covered
5 23 individual or the covered entity than the prescribed
5 24 drug, the substitution may be made only for medical
5 25 reasons that benefit the covered individual and with
5 26 the approval of the prescribing health professional.

5 27 2. This section shall not be interpreted to permit
5 28 the substitution of an equivalent drug product
5 29 contrary to the instructions of the prescribing health
5 30 professional.

5 31 Sec. 5. NEW SECTION. 155B.5 GENERAL PROVISIONS.

5 32 1. The commission shall adopt rules pursuant to
5 33 chapter 17A to administer this chapter.

5 34 2. A covered entity may bring a civil action to
5 35 enforce the provisions of this chapter or to seek
5 36 civil damages for violation of this chapter.
5 37 3. This chapter shall apply to pharmacy benefits
5 38 management services contracts entered into or renewed
5 39 on or after July 1, 2004.>
5 40 #2. Title page, line 2, by striking the words <and
5 41 making appropriations>.
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5 45 _____
5 45 MARK ZIEMAN
5 46 SF 2283.701 80
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